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9 **ASHLEY BOSMAN,**

10 **Plaintiff,**

11 **vs.**

12 **UNITED STATES OF AMERICA, LEIF MANLEY,**

13 **Defendants.**

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15 **Case No.: 12-CV-1320 YGR**

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17 **ORDER GRANTING MOTION OF DEFENDANT**
18 **UNITED STATES OF AMERICA TO DISMISS FOR**
19 **IMPROPER VENUE**

20 Plaintiff Ashley Bosman (“Bosman”) brings the instant complaint alleging claims under the
21 Freedom of Information Act (“FOIA”) and Federal Tort Claims Act (“FTCA”) arising out of a
22 injuries she sustained while working for a military contractor and attending a “team building” exercise
23 at a driving range on the Little Creek Naval Amphibious Base in Virginia. Bosman seeks damages
24 for her injuries, and injunctive relief to compel the Navy to respond to her FOIA request for
25 information pertinent to the incident. Defendant United States of America has filed a Motion to
26 Dismiss for Improper Venue or, Alternatively, to Transfer Venue.

27 Having carefully considered the papers submitted and the pleadings in this action, and for the
28 reasons set forth below, the Court hereby **GRANTS** the Motion to Dismiss for Improper Venue.¹

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28 ¹ Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds that
this motion, which has been noticed for hearing on May 22, 2012, is appropriate for decision without oral
argument. Accordingly, the Court **VACATES** the hearing set for May 22, 2012.

1 STANDARD APPLICABLE TO THE MOTION
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3 Failure to file in a proper venue may be raised by motion pursuant to Rule 12(b)(3) of the
4 Federal Rules of Civil Procedure. When considering a motion to dismiss pursuant to Rule 12(b)(3), a
5 court need not accept the pleadings as true and may consider facts outside of the pleadings. *See*
6 *Murphy v. Schneider National, Inc.*, 362 F.3d 1133, 1137 (9th Cir. 2004); *Argueta v. Banco*
7 *Mexicano, S.A.*, 87 F.3d 320, 324 (9th Cir.1996). Once the defendant has challenged the propriety of
8 venue in the district, the plaintiff bears the burden of showing that venue is proper. *Piedmont Label*
9 *Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir.1979). Facts supporting venue may be
10 shown by declaration, affidavit, or other evidence. *Ziegler Chemical and Mineral Corp. v. Standard*
11 *Oil Company*, 32 F.R.D. 241, 243 (N.D. Cal. 1962). Pursuant to 28 U.S.C. § 1406(a), if the court
12 determines that venue is improper, the court must either dismiss the action or, if it is in the interests of
13 justice, transfer the case to a district or division in which it could have been brought. Whether to
14 dismiss for improper venue, or alternatively to transfer venue to a proper court, is a matter within the
15 sound discretion of the district court. *See King v. Russell*, 963 F.2d 1301, 1304 (9th Cir.1992).

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17 DISCUSSION
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19 Generally, courts look to the venue provisions of 28 U.S.C. § 1391 to determine whether
20 venue is proper, unless the statute in question has a special venue provision. *See Johnson v. Payless*
21 *Drug Stores Northwest, Inc.*, 950 F.2d 586, 587 (9th Cir. 1991) (specific venue provision in statute
22 applicable to particular case takes precedence over general venue rule). Here, Bosman brings claims
23 under FOIA and the FTCA, each of which has its own venue provision. The FTCA provides for
24 venue in either (1) the judicial district where the plaintiff resides, or (2) the judicial district where the
25 act or omission complained of occurred. 28 U.S.C. § 1402(b). FOIA provides for venue in either: (1)
26 the judicial district where the plaintiff resides, (2) the judicial district where plaintiff has her principal
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1 place of business, (3) the judicial district where the agency records are situated, or (4) the District of
2 Columbia. 5 U.S.C. § 552(a)(4)(B).

3 With respect to venue, Bosman's complaint alleges:

4 Plaintiff is a native of California, and was born and grew up in California, several
5 miles north of Los Angeles and east of Santa Barbara; and Plaintiff's parents and
6 grandparents live in that area. After graduating from high school in Acton, California,
7 Plaintiff joined the U.S. Navy and served first in Italy and then for her last two years as
a guard at Guantanamo Bay, aka GTMO. Upon completion of her four years in the
8 Navy Plaintiff would have returned to California but for the fact that her then husband,
a United States Marine, was stationed near Virginia Beach, Virginia, and Plaintiff was
9 the mother of her husband's child (they later had an additional child as well.) Plaintiff
10 is presently divorced from her husband. Plaintiff intends to return to California as soon
11 as it is practical to do so. Plaintiff is informed and believes that the only proper venue,
12 for this action, would be either (1) where the incident causing her injuries happened
(the eastern part of Virginia) or (2) where Plaintiff "resides" as of the time her
Complaint is filed.

13 (Dkt. No. 1, Complaint, ¶ 2.) Bosman does not allege that she resided in the Northern District of
14 California when she filed her complaint or at any other time. She alleges that she is a renter in
15 Virginia and has remained in Virginia to receive medical care. (*Id.* ¶ 4.) Moreover, around the same
16 time as Bosman filed suit in the Northern District of California, she filed a *pro se* complaint in the
17 United States District Court for the Eastern District of Virginia, alleging the same essential claims and
18 events. (*Id.*, Ex. D.) In that complaint, Bosman lists her address as Chesapeake, Virginia. (*Id.*, Ex. D,
19 p. 1.) Plainly, Bosman cannot establish proper venue under either statute by virtue of her residence.

20 Bosman argues that she intends to move to California when feasible. She notes that her
21 divorce decree specifically included a provision that she can return to California. This, she contends,
22 shows that her "true and ultimate domicile" is California.

23 First, Bosman's intentions to make California her ultimate "domicile" have no bearing on
24 whether, at the time she filed her complaint, venue was proper in this district. The statutes in question
25 look only to "residence." The Ninth Circuit has recognized that, in the context of the general venue
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1 statute, 28 U.S.C. § 1391(a)(1), (b)(1), the statutory term “residence,” of actual place of abode, is
2 distinct from the term “domicile,” which includes a connotation of intent to remain. *See Arley v.*
3 *United Pacific Insurance Co.*, 379 F.2d 183, 185 (9th Cir.1967); *Stacher v. U.S.*, 258 F.2d 112, 116
4 (9th Cir.1958). This holding should be extended to the FOIA and FTCA venue statutes as well. *See*
5 *Lewis v. United States*, 2004 WL 2757931 (N.D. Cal., Dec. 2, 2004) (extending general venue
6 statute’s “residence” v. “domicile” distinction to venue provisions of the Public Vessels Act).²

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8 Second, even if Bosman’s intentions regarding her “true domicile” had any bearing on the
9 propriety of the venue, Bosman undercuts her own arguments. While she professes an intent to return
10 to California, she also indicates that she plans to remain in Virginia so that her two small children will
11 be able to visit their father (her ex-husband) more easily once he returns from Afghanistan. (Dkt. 13,
12 Response, at 4:23-5:5.)

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14 Further, Bosman does not satisfy any of the non-residency bases for venue either. With
15 respect to the FTCA claim, Bosman alleges that the acts or omissions complained of took place in
16 Virginia, not in the Northern District of California. As to the FOIA claim, Bosman does not allege
17 that she has a “principal place of business” in this district, or that the records she seeks are located in
18 this district. Indeed, the evidence offered in support of the motion indicates that none of the records
19 would be in California. (*See* declarations at Dkt. No. 8, 9.)

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26 ² Bosman’s citation to *Gaudin v. Remis*, 379 F.3d 631 (9th Cir. 2004), is unavailing. That
27 case concerned “domicile” rather than residence, and looked to factors for determining diversity
28 jurisdiction for purposes of a child custody case under the International Child Abduction Remedies
Act. *Id.* at 636.

1 CONCLUSION
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3 In short, Plaintiff has not alleged or offered facts to show that venue is proper in the Northern
4 District of California. The Motion to Dismiss is **GRANTED**. This action is **DISMISSED WITHOUT**
5 **PREJUDICE** for improper venue. The motion, in the alternative, to transfer venue is denied as moot.

6 **IT IS SO ORDERED.**

7 This order terminates Docket No. 7.

8 Date: May 15, 2012


9 YVONNE GONZALEZ ROGERS
10 UNITED STATES DISTRICT COURT JUDGE